S.B. CIVIL WRIT PETITION NO.651/2004

Ruparam vs. Additional Civil Judge (JD), Jaitaran and ors.

Date : 23.5.2005

HON'BLE MR. PRAKASH TATIA, J.

Mr. RR Nagori, for the petitioner.

Mr. LR Upadhyay, for the respondents.

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Heard learned counsel for the parties.

The petitioner/defendant is aggrieved against the order dated 17.11.2003 by which the trial court rejected the petitioner's application for amendment of the plaint by which the petitioner sought relief of possession of the property in dispute on the allegation that during the pendency of the suit, the position is altered and, therefore, the petitioner sought relief of possession of the property also.

The application was dismissed on the ground that it has been filed after inordinate delay.

In a suit for injunction in appropriate case and on proving the facts, the plaintiff can get the relief of possession in some cases without even amendment of the plaint. The amendment of plaint, in such circumstances, will only give an opportunity to the defendant to meet with the allegations of the plaintiff with specific pleadings

and it will avoid the multiplicity of the proceedings before the court as the relief to claim possession has not become barred in this case. In view of this, if there was any delay on the part of the petitioner/plaintiff, the respondents could have been compensated by awarding cost by the trial court.

In view of the above, this writ petition deserves to be allowed, hence allowed. The impugned order dated 17.11.2003 is set aside. The amendment application filed by the petitioner is allowed on payment of costs of Rs.2,000/- by the petitioner to the defendant within a period of six weeks from today (since there is summer vacation).

(PRAKASH TATIA), J.

S.Phophaliya